

Introduced by Senator Hertzberg

February 4, 2016

An act to amend Section 1773.1 of Labor Code, relating to prevailing wage.

LEGISLATIVE COUNSEL'S DIGEST

SB 954, as amended, Hertzberg. Public works: prevailing wage: per diem wages.

Existing law requires, except for public works projects of \$1,000 or less, that workers employed on public works be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality that the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed, as prescribed. Existing law requires the Director of Industrial Relations to determine the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is to be performed, and the general prevailing rate of per diem wages for holiday and overtime work.

Existing law includes, as per diem wages, employer payment for industry advancement and collective bargaining agreements administrative fees, provided that these payments are required under a collective bargaining agreement pertaining to the particular craft, classification, or type of work within the locality or the nearest labor market area at issue. Per diem wages also include employer payments for other purposes similar to those specified, including, but not limited to, certain apprenticeship or other training programs, to the extent that the cost of training is reasonably related to the amount of the

contributions, and worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978, to the extent that the activities of the programs or committees are directed to the monitoring and enforcement of laws related to public works.

This bill would instead require per diem wages to include industry advancement and collective bargaining agreements administrative fees; ~~provided that the employer is required by a collective bargaining agreement to make those payments.~~ *fees if the payments are made pursuant to a collective bargaining agreement to which the employer is obligated.* The bill would also exclude from per diem wages, ~~if the payments are not made pursuant to a collective bargaining agreement to which the employer is obligated,~~ employer payments for other purposes similar to certain apprenticeship or other training programs, worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978, and industry advancement and collective bargaining agreements administrative fees. *fees, as specified.*

Existing law provides that employer payments are credits against the obligation to pay the general prevailing rate of per diem wages. Credit is prohibited for benefits required to be provided by other state or federal law or for payments made to monitor and enforce laws related to public works if those payments are not made to a program or committee established under the federal Labor Management Cooperation Act of 1978.

This bill would also prohibit credit for payments for industry advancement ~~if those payments are not required by a collective bargaining agreement.~~ *and collective bargaining agreement administrative fees if those payments are not made pursuant to a collective bargaining agreement to which the employer is obligated.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1773.1 of the Labor Code is amended to
- 2 read:
- 3 1773.1. (a) Per diem wages, as the term is used in this chapter
- 4 or in any other statute applicable to public works, includes
- 5 employer payments for the following:

1 (1) Health and welfare.

2 (2) Pension.

3 (3) Vacation.

4 (4) Travel.

5 (5) Subsistence.

6 (6) Apprenticeship or other training programs authorized by
7 Section 3093, to the extent that the cost of training is reasonably
8 related to the amount of the contributions.

9 (7) Worker protection and assistance programs or committees
10 established under the federal Labor Management Cooperation Act
11 of 1978 (29 U.S.C. Sec. 175a), to the extent that the activities of
12 the programs or committees are directed to the monitoring and
13 enforcement of laws related to public works.

14 (8) Industry advancement and collective bargaining agreements
15 administrative fees, provided that ~~the employer is required by a~~
16 ~~collective bargaining agreement to make these payments. these~~
17 *payments are made pursuant to a collective bargaining agreement*
18 *to which the employer is obligated.*

19 (9) Other purposes similar to those specified in paragraphs (1)
20 to (5), ~~inclusive.~~ *inclusive; or other purposes similar to those*
21 *specified in paragraphs (6) to (8), inclusive, if the payments are*
22 *made pursuant to a collective bargaining agreement to which the*
23 *employer is obligated.*

24 (b) Employer payments include all of the following:

25 (1) The rate of contribution irrevocably made by the employer
26 to a trustee or third person pursuant to a plan, fund, or program.

27 (2) The rate of actual costs to the employer reasonably
28 anticipated in providing benefits to workers pursuant to an
29 enforceable commitment to carry out a financially responsible plan
30 or program communicated in writing to the workers affected.

31 (3) Payments to the California Apprenticeship Council pursuant
32 to Section 1777.5.

33 (c) Employer payments are a credit against the obligation to
34 pay the general prevailing rate of per diem wages. However, credit
35 shall not be granted for benefits required to be provided by other
36 state or federal law, for payments made to monitor and enforce
37 laws related to public works if those payments are not made to a
38 program or committee established under the federal Labor
39 Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a), or
40 for payments for industry advancement ~~if those payments are not~~

~~required by a collective bargaining agreement. and collective bargaining agreement administrative fees if those payments are not made pursuant to a collective bargaining agreement to which the employer is obligated.~~ Credits for employer payments also shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing. However, an increased employer payment contribution that results in a lower hourly straight time or overtime wage shall not be considered a violation of the applicable prevailing wage determination if all of the following conditions are met:

(1) The increased employer payment is made pursuant to criteria set forth in a collective bargaining agreement.

(2) The basic hourly rate and increased employer payment are no less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the director's general prevailing wage determination.

(3) The employer payment contribution is irrevocable unless made in error.

(d) An employer may take credit for an employer payment specified in subdivision (b), even if contributions are not made, or costs are not paid, during the same pay period for which credit is taken, if the employer regularly makes the contributions, or regularly pays the costs, for the plan, fund, or program on no less than a quarterly basis.

(e) The credit for employer payments shall be computed on an annualized basis when the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, unless one or more of the following occur:

(1) The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer.

(2) The higher rate of payments is required by a project labor agreement.

(3) The payments are made to the California Apprenticeship Council pursuant to Section 1777.5.

(4) The director determines that annualization would not serve the purposes of this chapter.

(f) (1) For the purpose of determining those per diem wages for contracts, the representative of any craft, classification, or type

1 of worker needed to execute contracts shall file with the
2 Department of Industrial Relations fully executed copies of the
3 collective bargaining agreements for the particular craft,
4 classification, or type of work involved. The collective bargaining
5 agreements shall be filed after their execution and thereafter may
6 be taken into consideration pursuant to Section 1773 whenever
7 they are filed 30 days prior to the call for bids. If the collective
8 bargaining agreement has not been formalized, a typescript of the
9 final draft may be filed temporarily, accompanied by a statement
10 under penalty of perjury as to its effective date.

11 (2) When a copy of the collective bargaining agreement has
12 previously been filed, fully executed copies of all modifications
13 and extensions of the agreement that affect per diem wages or
14 holidays shall be filed.

15 (3) The failure to comply with filing requirements of this
16 subdivision shall not be grounds for setting aside a prevailing wage
17 determination if the information taken into consideration is correct.